

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

GAMON PLUS, INC., et al.,

Plaintiffs,

v.

CAMPBELL SOUP COMPANY, et al.,

Defendants.

CASE NO. 1:15-CV-08940

JUDGE JOHN ROBERT BLAKEY

JOINT STATUS REPORT

Plaintiffs Gamon Plus, Inc. and Gamon International, Inc. (collectively, “Plaintiffs” or “Gamon”) and Defendants Campbell Soup Company, Meijer, Inc., The Kroger Co., and Trinity Manufacturing, L.L.C. (collectively “Defendants”), by and through their respective undersigned attorneys, present this Joint Status Report pursuant to the Court’s Minute Entry (Dkt. 328).

I. JOINT STATUS REPORT

This Joint Status Report was prepared and filed on behalf of all parties. Where the parties disagree on issues, each party’s corresponding position is identified.

II. PENDING MOTIONS AND CASE PLAN

A. Pending Motions

The parties have fully briefed the issues relating to claim construction. (*See* Dkts. 240, 241, 250, 256, 260, 281.) In the joint status report required by LPR 4.2(f)(2), the parties set forth their position as to the nature and form of a claim construction hearing to be held by the Court. (Dkt. 260.) A claim construction hearing was set for February 22, 2023. The parties are on track to proceed with the claim construction hearing in accordance with the proposal set forth in Dkt. 260. A ruling on claim construction will trigger the corresponding expert discovery timeline and

deadline for filing dispositive motions. (*See* LPR 5.1, 6.1.)

On May 25, 2022, Joel A. Brodsky (Plaintiffs' former counsel) moved for leave to intervene (Dkts. 266 (filed under seal), 267 (redacted version), 286 (supplemental motion filed June 13, 2022)). That motion is fully briefed (Dkts. 297, 298, 302, 306, 307, and 308).¹

On July 1, 2022, Gamon filed a Motion to Dismiss Exceptional Case Counterclaim (Dkt. 294). That motion is fully briefed. (*See id.* and Dkts. 309, 310.)

On November 2, 2022, Defendants filed an opposed motion for leave to serve a subpoena for documents on Plaintiffs' prior counsel, Joel Brodsky. (Dkt. 321). The parties understand that Mr. Brodsky submitted a letter to the Court on December 24, 2022 regarding this motion. No briefing schedule has been set for this motion. Plaintiffs anticipate filing an opposition brief on January 18, 2023. Defendants request permission to file a reply brief in support of their motion one week after Plaintiffs file their opposition.

B. Case Management Plan

The parties followed the Joint Discovery Plan (Dkt. 72) adopted by this Court on May 26, 2016 (Dkt. 73) up until a stay was entered November 4, 2016, at which point discovery was suspended. (Dkt. 97.) At the time the stay was put in place, the parties had provided initial disclosures under LPR 2.1 and engaged in some initial fact discovery but, as the parties noted in an earlier Joint Status Report (Dkt. 141), fact discovery was in the early stages at the time of the stay.

When the stay was lifted in July 2021, the Court entered a discovery plan that set deadlines up through the submission of a joint claim construction and status report. (*See* Dkts. 159, 161.) Under that plan, discovery closed on March 17, 2022. Following the granting of the parties'

¹ Defendants have never been given access to the filed-under-seal versions of Brodsky's and Plaintiffs' related filings.

respective motions to compel and a motion by Gamon to extend fact discovery (Dkt. 228), the initial close of fact discovery was extended to June 15, 2022. The time for the parties to serve new discovery requests without leave of Court has passed. The parties have not yet completed fact discovery as the parties continue to finalize supplementation of responses to interrogatories and requests for admissions, document productions, and privilege log issues, and most fact depositions have not yet been taken.

On November 2, 2022, Defendants filed a motion to temporarily stay proceedings for two months based upon medical necessity. (Dkt. 317.) The Court granted that Motion and ordered the parties to finalize supplementation of responses to interrogatories and requests for admissions, document productions, and privilege log issues and complete fact depositions by March 10, 2023. (Dkt. 325.) The parties have resumed the litigation and anticipate scheduling fact depositions and otherwise completing fact discovery by the March 10, 2023 deadline. Within seven (7) days of receiving a claim construction order, the parties will file a Joint Status Report that includes a case schedule that accounts for the remaining deadlines under the Local Patent Rules.

III. STATUS OF SETTLEMENT DISCUSSIONS

The parties have engaged in settlement discussions but have been unable to reach a resolution of their dispute. The parties are conferring in accordance with Magistrate Judge Kim's order (Dkt. 330) to determine whether both sides are willing to participate in a settlement conference at this time.

Date: January 9, 2023

Respectfully submitted,

Respectfully submitted,

By: /s/ Steven E. Jedlinski (with permission)
Tracy Zurzolo Quinn (admitted *pro hac vice*)

By: /s/ Cristina Q. Almendarez
Kal K. Shah

HOLLAND & KNIGHT LLP
2929 Arch Street, Suite 800
Philadelphia, PA 19104
Tel: (215) 252-9522
tracy.quinn@hklaw.com

Steven E. Jedlinski
HOLLAND & KNIGHT LLP
150 North Riverside Plaza, 27th floor
Chicago, IL 60606
Tel: (312) 263-3600
steven.jedlinski@hklaw.com

Mark T. Goracke (admitted *pro hac vice*)
HOLLAND & KNIGHT LLP
10 Saint James Avenue
Boston, MA 02116
Tel: (617) 523-2700
mark.goracke@hklaw.com

*Attorneys for Defendants Campbell Soup
Company, the Kroger Co. and Meijer Inc.*

By: /s/ Martin Pavane (with permission)
Martin Pavane
DAVIS FIRM, P.C.
213 N. Fredonia Street, Suite 230
Chicago, IL 60606
Tel: 903-230-9090
mpavane@davisfirm.com

David Lesht (local counsel)
SPERLING & SLATER, LLC
55 W. Monroe Street, 32nd Floor
Chicago, IL 60603
Tel: (312) 641-3200
Fax: (312) 641-6492
dlesht@sperling-law.com

Attorneys for Trinity Manufacturing, L.L.C.

Mircea A. Tipescu
Cristina Q. Almendarez
Theresa L. Starck
Louis Constantinou
BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP
71 South Wacker Drive, Suite 1600
Chicago, Illinois 60606-4637
Tel: 312.212.4949
kshah@beneschlaw.com
mtipescu@beneschlaw.com
calmendarez@beneschlaw.com
tstarck@beneschlaw.com
lconstantinou@beneschlaw.com

*Attorneys for Gamon Plus, Inc. and Gamon
International, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2023 a copy of the foregoing ***Joint Status Report*** was filed electronically. Notice of this filing will be sent by operation of the Court's CM/ECF system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Cristina Q. Almendarez
*Counsel for Plaintiffs Gamon Plus, Inc. and
Gamon International, Inc.*